

JUL 02 2008

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

JAYSON WHITEHEAD,

Plaintiff,

v.

Civil Action No. 3:08cv 00032

UNITED STATE DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, for injunctive relief to prevent the withholding and to seek the production of agency records held by Defendant United States Department of the Army Corps of Engineers from Plaintiff.

Jurisdiction and Venue

1. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B), as it is an action seeking to enjoin the Defendant from withholding agency records and to order the production of agency records that have been improperly withheld from the Plaintiff. This Court has jurisdiction to enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 et seq.

2. Venue properly lies in the Western District of Virginia under 5 U.S.C. § 552(a)(4)(B), as the Plaintiff resides within this District.

Parties

3. Plaintiff Jayson Whitehead is a contributing writer for the *C-Ville Weekly*, a newspaper published in Charlottesville, Virginia. He is the requester of the withheld records.

4. Defendant United States Department of the Army Corps of Engineers (hereinafter

“United States”) is an agency of the United States Government, which is in possession of the records requested by the Plaintiff. It is an agency within the meaning of 5 U.S.C. § 552(f).

Facts

6. In 2006, United States purchased land located in Northern Albemarle County, Virginia, for \$7 million. The United States plans to use the land in conjunction with the Joint Use Intelligence Analysis Facility, also known as the National Ground Intelligence Center, a facility owned and operated by the United States and located in Northern Albemarle County.

7. In an electronic message sent February 26, 2007 to Dillard Horton of the Army Corps of Engineers, the Plaintiff, acting pursuant to FOIA, requested copies of “any and all appraisals, including updates to the appraisals, contracted by the Army Corps of Engineers for the determination of the value of the most recent parcel of land purchased in Rivanna Station, Virginia, as a site for the new Joint Use Intelligence Analysis Facility”, the parcel of land purchased in 2006, as described in ¶6 above.

8. By letter to the Plaintiff dated April 16, 2007, the Defendant, through District Counsel Joseph R. Loschi (hereinafter “Loschi”), denied the Plaintiff’s request for records of any and all appraisals of the land at issue, claiming that the records were exempt from disclosure under 5 U.S.C. § 552(b)(4). Loschi wrote in the letter that “release of the information could cause financial harm by affecting the owner’s ability to negotiate in the future.” A copy of the letter is attached to this Complaint as Exhibit A.

9. The Plaintiff timely filed a formal administrative appeal of the denial set forth in the letter dated April 16, 2007, by sending a letter addressed to Loschi on May 22, 2007. The appeal letter challenged the Defendant’s basis for concluding the requested records were exempt from disclosure on substantive grounds, requested that the denial be reconsidered, and that the

records be disclosed to the Plaintiff. The appeal letter also requested that a formal response to the appeal be provided within 20 days as required by 32 C.F.R. § 286.24(C)(2). A copy of the May 22, 2007 is attached to this Complaint as Exhibit B.

10. Plaintiff, through counsel, has made repeated phone calls to the Defendant, attempting to discover the status of the appeal, and have had neither response nor explanation for lack of response. As of July 2, 2008, no response to the appeal has been provided by the Defendant. Under 5 U.S.C. § 552(a)(6)(A)(ii), an agency is required to make a determination with respect to any appeal within twenty days, excepting Saturdays, Sundays, and legal public holidays, of receipt of the appeal.

FIRST CAUSE OF ACTION

Violation of the Freedom of Information Act for Failure to Timely Respond to Appeal

11. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 10 above.

12. Defendant's failure to timely respond to the Plaintiffs' challenges violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(ii).

SECOND CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Refusal to Disclose

13. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 10 above.

14. Contrary to Defendant's position, the records sought by the Plaintiff are not exempt from disclosure under exemption 4 of FOIA, 5 U.S.C. § 552(b)(4), because the records do not contain information that is confidential and disclosure would not impair the government's

ability to obtain information in the future or cause competitive harm to the seller of the property at issue in this case.

15. Defendant's withholding of the information requested by the Plaintiff violates FOIA, 5 U.S.C. § 552(a)(3)(A).

WHEREFORE, Plaintiff asks the Court for the following relief against the Defendant:


A) that a declaratory judgment be entered pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., declaring that the Defendant's refusal to disclose the records requested violates the Plaintiff's rights under 5 U.S.C. § 552 and that the Defendant failed to timely answer the appeal in accordance with 5 U.S.C. § 552(a)(6)(A)(ii);

B) that the Defendant be ordered to promptly make the requested records available to the Plaintiff;

C) that this Court order the Defendant to pay the Plaintiff his costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and,

D) such other and further relief as the Court may deem proper.

Respectfully submitted,
JAYSON WHITEHEAD
By counsel


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Dated: July 2, 2008